

### **REMARKS**

The undersigned attorney thanks the Examiner for his comments. Applicant respectfully requests reconsideration of this Patent Application, particularly in view of the above Amendment and the following remarks. No additional fee is due for this Amendment because the number of independent claims is not more than three and the total number of claims has not changed.

#### **Amendment to the Claims**

Claim 4 has been amended into independent form.

Claim 24 has been put back into dependent form.

Claims 15-18, 21, and 24 have been amended to clarify the preambles.

Claim 26 has been canceled without prejudice.

New Claim 27 has been added, and finds support in original Claim 1, and at page 5, last paragraph of the Substitute Specification.

No new matter has been added by this Amendment.

#### **Claim Rejections - 35 U.S.C. §112**

Claims 15-26 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Applicant has amended Claim 15, as well as Claims 18, 21, and 24, to clarify the preambles. Applicant believes this Amendment overcomes this rejection.

**Claim Rejections - 35 U.S.C. §103**

The rejection of Claims 1-3, 6-8, and 11-14 under 35 U.S.C. §103(a) as being unpatentable over Leach, U.S. Patent No. 2,961,119, in view of Dubach, U.S. Patent 5,558,239, is respectfully traversed.

The Office Action agrees with Applicant that the Leach Patent does not disclose or suggest Applicant's recited snap hinge. The Office Action applies the Dubach Patent for teaching the recited snap hinge, and alleges it would have been obvious to modify the Leach Patent with the snap hinge of the Dubach Patent.

Applicant respectfully disagrees with the Office Action's combination. Absent knowledge of Applicant's claimed invention, one of ordinary skill in the art would not have modified the Leach Patent with the snap hinge of the Dubach Patent. This is because the closure and snap hinge of the Dubach Patent is only formed in the open position, while the Leach Patent closure is formed in the closed position.

FIG. 5 of the Dubach Patent shows the closure and hinge in the closed position, and FIGS. 6 and 7 show the hinge in the open position as molded. It is clear from the figures and description of the Dubach Patent<sup>1</sup> that the closure and hinge can only be formed in the open position. In FIG. 5, the walls 10 and 11 of the cap and lower closure part are aligned and the thin areas 12a, 12b of the

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<sup>1</sup> Applicant is the inventor of the Dubach Patent, and thus has first-hand knowledge of the structure and the manufacturing process.

hinge are closed. One of ordinary skill in the art would readily appreciate that such a hinge structure, particularly the structure of the thin areas 12a and 12b and element 7, can only be produced in the open position shown in FIGS. 6 and 7, as these areas are completely closed in the closed position shown in FIG. 5.

As the snap hinge of the Dubach Patent can only be formed in the open position, and the Leach Patent explicitly seeks a closure manufactured in the closed position, the combination would not have been obvious or reasonably expected to be successful. This has been the situation for some time, as film hinges like the Leach et al. Patent have been known as early as the 1960's and snap hinges have been known as early as the 1970's, but still the present invention and forming a snap hinge in a closed and molded closure has never been demonstrated until Applicant's invention.

It is also pertinent to note that the closed top of the lower closure part in the Dubach Patent prevents the Dubach Patent's closure from being manufactured in the closed state. There is no reason in the prior art, absent the teaching of Applicant, that would lead one of ordinary skill in the art to use the snap hinge of the Dubach Patent for the film hinge of the Leach Patent. Such a combination is also more than a mere substitution, as the substitution of hinges would require a very different mold and forming process.

In view of the above comments, Applicant respectfully asserts that the claimed invention would not have been obvious over the teachings of the

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Leach Patent and the Dubach Patent. Favorable reconsideration and withdrawal of this rejection are respectfully requested.

The above comments are also applicable to new Claim 27. Furthermore, the prior art does not provide the recited separation seam of Claim 27, which is formed in a closed position securing the cap and lower closure portion.

The rejection of Claim 4 under 35 U.S.C. §103(a) as being unpatentable over Leach, U.S. Patent No. 2,961,119, in view of Dubach, U.S. Patent 5,558,239, and further in view of Mueller et al., U.S. Patent Publication 2003/0116879, is respectfully traversed.

Claim 4 has been amended into independent form, and further recites features that allow for a simple molding tool, and in particular an only axially moveable core member of the mold for forming the inside of the closure. The Mueller et al. Publication also does not provide a closure that can be molded in the closed position, as the lower closure part has a cover that extends across, similar to the Dubach Patent discussed above.

The rejection of Claim 5 under 35 U.S.C. §103(a) as being unpatentable over Leach, U.S. Patent No. 2,961,119, in view of Dubach, U.S. Patent 5,558,239, and further in view of Harrold et al., U.S. Patent 6,631,820, is

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respectfully traversed. Claim 5 depends from Claim 1, and is thus patentable for at least the same reasons as Claim 1.

The rejection of Claim 9 under 35 U.S.C. §103(a) as being unpatentable over Leach, U.S. Patent No. 2,961,119, in view of Dubach, U.S. Patent 5,558,239, and further in view of Neveras et al., U.S. Patent 5,386,918, is respectfully traversed. Claim 9 depends from Claim 1, and is thus patentable for at least the same reasons as Claim 1.

The rejection of Claim 10 under 35 U.S.C. §103(a) as being unpatentable over Leach, U.S. Patent No. 2,961,119, in view of Dubach, U.S. Patent 5,558,239, is respectfully traversed. Claim 10 depends from Claim 1, and is thus patentable for at least the same reasons as Claim 1.

#### **Allowable Subject Matter**

Claims 15-26 were previously indicated as containing allowable subject matter. Applicant believes that as no prior art has been applied to these claims, these claims are now again allowable in view of the above Amendment responding to the 35 U.S.C. §112 rejections.

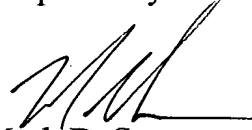
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### Conclusion

Applicant intends to be fully responsive to the outstanding Office Action. If the Examiner detects any issue which the Examiner believes Applicant has not addressed or resolved in this response, the undersigned attorney again requests a telephone interview with the Examiner.

Applicant sincerely believes that this Patent Application is now in condition for allowance and, thus, respectfully requests early allowance.

Respectfully submitted,



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